UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 21 2007

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

James F. Bennett
Branch of Environmental Assessment
Minerals Management Service
381 Elden Street
Herndon, Virginia 20170-4817

Dear Mr. Bennett:

The Environmental Protection Agency (EPA), in accordance with its responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, has reviewed the Minerals Management Service's (MMS) Draft programmatic Environmental Impact Statement (EIS) for Alternative Energy Development and Production and Alternative Use of Facilities on the Outer Continental Shelf (CEQ # 20070089).

In general, this draft EIS provides much of the programmatic level information necessary to assess the environmental impacts associated with implementing an alternative energy and alternate use program and associated regulations. It is clear that, as MMS implements this program and assesses future site specific proposals, there is a continuing need to require the development of adequate environmental baseline information from which to measure the environmental impacts of the proposed project and alternatives. The development of adequate mitigation and monitoring plans should also be based on the characterization of baseline conditions and analysis of project impacts.

The EIS discusses the potential for impacts to marine organisms and marine, coastal and inland birds from operation of wind energy projects. The wind energy site characterization section of the executive summary (ES-5) focuses on the characterization of wind resources and the ocean substrate to "ensure that turbines can be properly located." We recommend that the site characterization efforts also include work to adequately characterize baseline organisms ranging from marine mammals to avian species that may use the project area.

The EIS (page 5-52, third paragraph) indicates that it "is not possible to estimate the collision rate for offshore wind turbines, as this would depend on the specific location of the facilities and the marine and coastal birds that occur in or migrate through the

surrounding areas." Text later in the same paragraph indicates that impacts to species would range from negligible to moderate depending on the species involved and numbers affected. In our view, the wide range of potential for impacts to avian species described in the EIS speaks to the need for a requirement for adequate site-specific baseline characterizations as part of the alternatives analysis and siting process.

EPA has no objection to the proposed action. However, we note that some of the text in Section 4 does not properly discuss the requirements of the Clean Water Act. Accordingly, the enclosure contains specific clarification language that more accurately describes various Clean Water Act requirements

Thank you for the opportunity to review the draft EIS. If you have any questions regarding our comments, please contact me at 202-564-5400 or contact Ken Mittelholtz at 202-564-7156.

Sincerely,

Anne Norton Miller
Director
Office of Federal Activities

Enclosure

EPA
Specific Clarification Language
Relating to the Clean Water Act

Section 4.2.6.2 *Waste Management*

First sentence of 2nd paragraph should read: There are ~~31~~ 36 final ~~and 3 interim~~ dredged material disposal sites designated on the Atlantic OCS (40 CFR ~~228.14 and~~ 228.15).
{NOTE: interim sites can't be used so reference has been deleted here}

Starting with the 5th sentence, the 6th paragraph should read: ~~Under Section 312 of the Clean Water Act (CWA), the discharge of sewage into coastal waters from any vessel with an installed marine sanitation device is prohibited unless: the marine sanitation device has been certified by the USCG; fecal coliform bacterial count in the discharge is less than 1,000/100 milliliters (mL); and there are no visible floating solids (40 CFR 140).~~ Clean Water Act Section 312 requires the use of marine sanitation devices (MSDs), on-board equipment for treating and discharging or storing sewage, on all commercial and recreational vessels that are equipped with installed toilets. There are three types of MSDs. For Type I MSDs (vessels equal to or less than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 1000 per 100 milliliters and have no visible floating solids. For Type II MSDs (vessels greater than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter. Type III MSDs are designed to prevent the overboard discharge of treated or untreated sewage. They are commonly called holding tanks because the sewage flushed from the marine head is deposited into a tank containing deodorizers and other chemicals. The contents of the holding tank are stored until it can be properly disposed of at a shore-side pumpout facility. Section 312 does not apply to vessels with portable toilets ("porta-potties") nor any other on-board portable sewage reception system; gray water from bath or kitchen sinks; nor does it apply to vessels beyond the 3 nautical mile limit of U.S. Territorial waters. ~~Section 312 of the CWA allows States to designate all or portions of their waters as a no-discharge zone into which the discharge of sewage (whether treated or untreated) from all vessels is completely prohibited.~~ Section 312 also allows EPA or States to establish no-discharge zones in which the discharge of sewage from all vessels into specified waters is prohibited. There are 3 objectives for this designation. Under CWA Section 312 (f)(3), a State may designate portions of their waters as no-discharge zones if the State determines that the protection and enhancement of the quality of the waters require greater environmental protection than current Federal standards allow. In this instance, EPA is required to determine if there are adequate pumpout facilities available. Additionally, a State may make a written application to the Administrator under CWA Sections 312 (f)(4)(A) or 312 (f)(4)(B), for the issuance of a regulation completely prohibiting discharges from a vessel of any sewage, whether treated or not, into specified waters that have environmental importance or waters that serve as drinking water intakes, respectively. The application requirements may vary depending on whether it's an application under CWA

Sections 312 (f)(3), 312 (f)(4)(A), or 312 (f)(4)(B). Currently, the following States in the Atlantic region have designated all or certain segments of their surface waters as no-discharge zones: Rhode Island, Connecticut, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, South Carolina, and Virginia.

Section 4.3.6.2 *Waste Management*

First sentence of 2nd paragraph should read: There are ~~27~~ 28 final ~~and 11 interim~~ dredged material disposal sites designated on the Gulf of Mexico OCS (40 CFR ~~228.14 and~~ 228.15). **{NOTE: interim sites can't be used so reference has been deleted here}**

Starting with the 5th sentence, the 6th paragraph should read: ~~Under Section 312 of the Clean Water Act (CWA), the discharge of sewage into coastal waters from any vessel with an installed marine sanitation device is prohibited, unless: the marine sanitation device has been certified by the USCG; the fecal coliform bacterial count in the discharge is less than 1,000/100 mL; and there are no visible floating solids (40 CFR 140).~~ Clean Water Act Section 312 requires the use of marine sanitation devices (MSDs), on-board equipment for treating and discharging or storing sewage, on all commercial and recreational vessels that are equipped with installed toilets. There are three types of MSDs. For Type I MSDs (vessels equal to or less than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 1000 per 100 milliliters and have no visible floating solids. For Type II MSDs (vessels greater than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter. Type III MSDs are designed to prevent the overboard discharge of treated or untreated sewage. They are commonly called holding tanks because the sewage flushed from the marine head is deposited into a tank containing deodorizers and other chemicals. The contents of the holding tank are stored until it can be properly disposed of at a shore-side pumpout facility. Section 312 does not apply to vessels with portable toilets ("porta-potties") nor any other on-board portable sewage reception system; gray water from bath or kitchen sinks; nor does it apply to vessels beyond the 3 nautical mile limit of U.S. Territorial waters. ~~Section 312 of the CWA allows States to designate all or portions of their waters as a no-discharge zone into which the discharge of sewage (whether treated or untreated) from all vessels is completely prohibited.~~ Section 312 also allows EPA or States to establish no-discharge zones in which the discharge of sewage from all vessels into specified waters is prohibited. There are 3 objectives for this designation. Under CWA Section 312 (f)(3), a State may designate portions of their waters as no-discharge zones if the State determines that the protection and enhancement of the quality of the waters require greater environmental protection than current Federal standards allow. In this instance, EPA is required to determine if there are adequate pumpout facilities available. Additionally, a State may make a written application to the Administrator under CWA Sections 312 (f)(4)(A) or 312 (f)(4)(B), for the issuance of a regulation completely prohibiting discharges from a vessel of any sewage, whether treated or not, into specified waters that have environmental importance or waters that serve as drinking water intakes, respectively. The application requirements may vary depending on whether it's an application under CWA Sections 312 (f)(3), 312 (f)(4)(A), or 312 (f)(4)(B). Currently, in the Gulf of Mexico region, Florida, and Texas have designated all or certain segments of their surface waters as no-discharge zones.

Section 4.4.6.2 *Waste Management*

First sentence of 2nd paragraph should read: There are ~~15~~ 22 final ~~and 11 interim~~ dredged material disposal sites designated on the Pacific OCS (40 CFR ~~228.14 and~~ 228.15).
{NOTE: interim sites can't be used so reference has been deleted here}

Starting with the 5th sentence, the 6th paragraph should read: ~~**Under Section 312 of the Clean Water Act (CWA), the discharge of sewage into coastal waters from any vessel with an installed marine sanitation device is prohibited unless: the marine sanitation device has been certified by the USCG; fecal coliform bacterial count in the discharge is less than 1,000/100 mL; and there are no visible floating solids (40 CFR 140).**~~ Clean Water Act Section 312 requires the use of marine sanitation devices (MSDs), on-board equipment for treating and discharging or storing sewage, on all commercial and recreational vessels that are equipped with installed toilets. There are three types of MSDs. For Type I MSDs (vessels equal to or less than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 1000 per 100 milliliters and have no visible floating solids. For Type II MSDs (vessels greater than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter. Type III MSDs are designed to prevent the overboard discharge of treated or untreated sewage. They are commonly called holding tanks because the sewage flushed from the marine head is deposited into a tank containing deodorizers and other chemicals. The contents of the holding tank are stored until it can be properly disposed of at a shore-side pumpout facility. Section 312 does not apply to vessels with portable toilets ("porta-potties") nor any other on-board portable sewage reception system; gray water from bath or kitchen sinks; nor does it apply to vessels beyond the 3 nautical mile limit of U.S. Territorial waters. ~~**Section 312 of the CWA allows States to designate all or portions of their waters as a no-discharge zone into which the discharge of sewage (whether treated or untreated) from all vessels is completely prohibited.**~~ Section 312 also allows EPA or States to establish no-discharge zones in which the discharge of sewage from all vessels into specified waters is prohibited. There are 3 objectives for this designation. Under CWA Section 312 (f)(3), a State may designate portions of their waters as no-discharge zones if the State determines that the protection and enhancement of the quality of the waters require greater environmental protection than current Federal standards allow. In this instance, EPA is required to determine if there are adequate pumpout facilities available. Additionally, a State may make a written application to the Administrator under CWA Sections 312 (f)(4)(A) or 312 (f)(4)(B), for the issuance of a regulation completely prohibiting discharges from a vessel of any sewage, whether treated or not, into specified waters that have environmental importance or waters that serve as drinking water intakes, respectively. The application requirements may vary depending on whether it's an application under CWA Sections 312 (f)(3), 312 (f)(4)(A), or 312 (f)(4)(B). Currently, California is the only State in the Pacific region that has designated segments of its surface waters as ~~a~~ no-discharge zone~~s~~.

Section 7.5.1.2 *Non-Oil-and-Gas Activities*

Fourth Paragraph should read:

Dredging. ~~**The Ocean Dumping Banning Act of 1988 prohibits the dumping of any municipal or industrial waste into the open ocean, so dredging is the only form (albeit indirect) of ocean dumping of these waste types. Dredging is routinely done for a variety of reasons (e.g., channel construction and maintenance, pipeline placement, creation of harbor and docking areas).**~~ Virtually all material ocean dumped in the United States today is dredged material (sediments) removed from the bottom of waterbodies in order to maintain navigation channels and berthing areas. Other materials that are currently ocean dumped include fish wastes, human remains, and vessels. Certain materials, such as high-level radioactive waste, medical waste, sewage sludge, and industrial waste, may not be dumped in the ocean. ~~**Offshore disposal of dredge spoils is authorized**~~ Ocean dumping of dredged material is regulated under Title I of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 USC 1401 et seq) ~~**and the Federal Water Pollution Control Act, as amended (33 USC 1251). The USEPA has designated specific offshore sites in each of the USEPA Regions where this type of disposal can occur. There are regulated dredge disposal areas in Atlantic, GOM and Pacific regions; most of these are in State waters. For example, a large site in the Atlantic region is the Dam Neck site, which is located off of coastal Virginia and is 8 nautical mi^2 in size. Another is the New York Bight Dredged Material Disposal Site, which receives an average of 3.4 million m^3 (4.5 million yd^3) of dredge material each year (USEPA 2006e). There are 35 operational ocean disposal sites in the GOM, mostly in State waters, and in the Pacific region there are 31 ocean disposal sites; combined, these sites receive millions of cubic meters of dredge material annually (USDOI/MMS 2006l).**~~ Most of the dredged material dumped in the ocean is disposed at ocean dumping sites specifically designated by EPA for dredged material disposal under Section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA). The Army Corps of Engineers is required to use such sites for ocean disposal to the extent feasible. EPA's ocean dumping regulations at 40 C.F.R. Part 228 provide the criteria and procedures for the designation and management of ocean disposal sites, and list the currently designated sites by EPA region. There are 36 dredged material disposal sites designated in the Atlantic region, 28 in the Gulf of Mexico region, and 22 in the Pacific region.

Other Clarification Recommendations

There are a few other changes that we believe should be made throughout the document. These include:

1. In general, where the document refers to "permitted discharges", reference should be made to the permitting authority.

2. NPDES permits are NOT given for survey vessels, but can be issued for discharges from platform facilities.

3. Where the language refers to survey vessels, it would be better to delete the word "permitted" altogether.

As an example of an occurrence where these changes should be implemented, refer to **Section 5.3.9.2 *Site Characterization***. The last few sentences of the first paragraph should read "~~**Permitted**~~ Discharges from survey vessels would be released into the open ocean where they would be rapidly diluted and dispersed, or collected and taken to shore for treatment and disposal. Sanitary and domestic wastes would be processed through on-site waste treatment facilities before being discharged overboard. Deck drainage would also be processed prior to discharge. Thus, impacts to marine and coastal birds from ~~**permitted**~~ waste discharges from survey vessels are expected to be negligible."